

REMARKS

The pending Office Action addresses and rejects claims 1-26, 29-40, 42-48, 50-52, and 54-63. Applicants respectfully request reconsideration and allowance based on the remarks submitted herewith.

At the outset, Applicants thank Examiner Schneider for extending the courtesy of a telephone interview on June 1, 2010 to the undersigned Attorney for Applicants and Attorney Lisa Adams. During the interview, **agreement was reached** that the amendments made herein overcome all of the present rejections.

Amendments to the Claims

Applicants amend claim 1 to recite an insertion shaft slidingly disposed in the bore of the expandable body and in a bore of the expander pin, the insertion shaft being releasably secured to the expandable body. Claim 29 is amended to recite an installation tool comprising a shaft slidingly received in the bore of the expandable body and in a bore of the expander pin and configured to be releasably secured to the expandable body. Applicants amend claims 18-22, 24, 51, 52, and 55 to clarify recitations related to a recited shaft and claim dependencies in view of claim amendments. Claim 58 is amended to recite that the installation tool includes a trigger for inducing the driving of the expander pin and claim 59 is amended to recite that the installation tool comprises a slap hammer. Claims 16, 17, 50, 56, and 57 are canceled. Support for these amendments can be found throughout the original specification and figures, including at paragraphs [0064]-[0066], [0075]-[0079], [0086], and [0087] and FIGS. 1-8 and 17-30 of the published application. No new matter is added.

Rejections Pursuant to 35 U.S.C. § 112

The Examiner rejects claims 56-59 pursuant to 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement. The Examiner argues that the specification does not disclose a system having two insertion instruments – the installation tool recited in claim 29 and the cannulated driver assembly that was recited in claims 56-59. Claims 56 and 57 have been canceled and claims 58 and 59 no longer recite a cannulated driver assembly. Accordingly, the basis for this rejection is obviated.

The Examiner rejects claims 17-20, 22, 24, 50-52, 55, and 57 pursuant to 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The Examiner argues that references to the term "shaft" in these claims are unclear because both the installation tool and the expander pin have a "shaft." Claims 17, 50, and 57 are canceled. Claims 18-20 and 22 are amended to recite that the shaft is the insertion shaft and claims 51, 52, and 55 are amended to recite that the shaft is the shaft of the installation tool. Claim 24 is amended to recite "a second shaft" instead of just "a shaft." The recited second shaft is connected to the expandable body and is not the shaft of the expander pin recited in claim 1. Accordingly, the bases for these rejections pursuant to 35 U.S.C. § 112, second paragraph are obviated.

Rejections Pursuant to 35 U.S.C. § 103

Claims 1-5, 7, 11-15, 19-26, 30-33, 35, 39, 40, 42-48, 52, 54, 55, 58, 59, and 60-63

The Examiner rejects claims 1-5, 7, 11-17, 19-26, 29-33, 35, 39, 40, 42-48, 50, 52, 54-59, and 60-63 as being obvious over U.S. Patent No. 7,074,203 of Johanson et al. ("Johanson") in view of U.S. Patent No. 5,522,817 of Sander et al. ("Sander"). Claims 1 and 29 are independent and claims 2-5, 7, 11-15, 19-26, 30-33, 35, 39, 40, 42-48, 52, 54, 55, 58, 59, and 60-63 depend therefrom. Claims 16, 17, 50, 53, 56, and 57 have been canceled.

As agreed upon with the Examiner, the amendments to claims 1 and 29 overcome the present rejection. The combination of Johanson in view of Sander fails to teach or even suggest an insertion shaft that is releasably secured to the expandable body or an installation tool comprising a shaft slidably received in the bore of the expandable body and in a bore of the expander pin and configured to be releasably secured to the expandable body. Accordingly, claims 1 and 29, as well as claims 2-5, 7, 11-15, 19-26, 30-33, 35, 39, 40, 42-48, 52, 55, 58, 59, and 60-63 which depend therefrom, distinguishes over Johanson in view of Sander and represents allowable subject matter.

Claims 6, 8-10, 18, 34, 36-38, and 51

The Examiner rejects claims 6 and 34 as being obvious over Johanson in view of Sander, further in view of U.S. Patent No. 6,123,711 of Winters ("Winters"). The Examiner rejects claims 8-10 and 36-

Application No. 10/811,636
Inventors: McDevitt et al.
Reply to final Office Action of March 2, 2010

Atty. Docket No.: 22956-692 (MIT222USCNT2)
Examiner: Lynnsy M. Schneider

38 as being obvious over Johanson in view of Sander, further in view of U.S. Patent No. 5,725,529 of Nicholson et al. ("Nicholson"). The Examiner rejects claims 18 and 51 as being obvious over Johanson in view of Sander, further in view of U.S. Patent No. 5,489,210 of Hanosh ("Hanosh"). Claims 6, 8-10, 18, 34, 36-38, and 51 depend from allowable base claims 1 and 29. None of Winters, Nicholson, and Hanosh remedy the deficiencies of the combination of Johanson in view of Sander. Accordingly, claims 6, 8-10, 18, 34, 36-38, and 51 are allowable.

Double Patenting

The Examiner rejects claims 1-63 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-78 of U.S. Patent No. 6,733,506 ("the '506 patent") in view of Sander, and also over claims 1-43 of U.S. Patent No. 6,319,252 ("the '252 patent") in view of Sander. Applicants note that claims 16, 17, 27, 28, 41, 49, 50, 53, 56, and 57 have been canceled. Both the '506 patent and the '252 patent, however, require either a tissue attachment apparatus or a tissue attachment means, which the present application does not recite in its independent claims. At least in view of the amendments to the claims, this rejection is obviated.

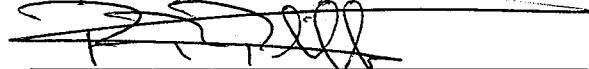
Conclusion

All pending claims are believed to be in condition for allowance. If the Examiner believes that an interview would facilitate the resolution of any outstanding issues, he is kindly requested to contact the undersigned.

Date: June 2, 2010

Nutter McClennen & Fish LLP
Seaport West
155 Seaport Boulevard
Boston, MA 02210
Tel: (617)439-2879
Fax: (617)310-9879

Respectfully submitted,



Rory P. Pheiffer, Reg. No. 59,659
Attorney for Applicant(s)